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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92047162
Party	Plaintiff Fresh Express Incorporated
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Submission	Motion for Summary Judgment
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Date	06/13/2008
Attachments	DJ Brooks Decl.pdf (7 pages)(313830 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FRESH EXPRESS INCORPORATED,

Petitioner,

v.

SUPREME OIL COMPANY,

Registrant.

Cancellation No.: 92047162

Reg. No. 1,758,520

Issued: March 16, 1993

Mark: SALAD BAR

**DECLARATION OF DJ BROOKS IN
SUPPORT OF PETITIONER'S
MOTION FOR SUMMARY
JUDGMENT**

I, DJ Brooks, hereby declare:

1. I am a private investigator employed by the firm of National Trademark Investigations, 20322 Windrow Drive, Ste 200, Lake Forest, CA 92630.
2. On approximately February 16, 2007, my firm was requested by the law firm of Perry IP Group ALC to determine whether the trademark "Salad Bar" was then presently in use by Supreme Oil Company, and if so, to the determine the nature and scope of such use.
3. In response to this request, I conducted the following investigation.

INTERNET SEARCHES:

4. I began my investigation by searching the United States Patent and Trademark Office filing pertaining to Serial Number 1758520. This search was conducted to familiarize

myself with the subject, and to develop information regarding the mark which may be pertinent to follow-on investigation. Search results indicated the aforementioned registration by Supreme Oil Company located at 80 South Dean Street, Englewood, New Jersey 07631 remains active within "IC 030: relish, tartar sauce, vinegars, spices, capers, condiments, namely, marinated mushrooms, mustards, rice and food flavorings". I noted the First Date of Use and First Use in Commerce were cited as January 01, 1950 for this filing.

5. I then conducted a Global Internet search indexed to the term "Salad Bar", and the terms "relish or dressing or condiment". Search results did not produce a reference to Supreme Oil Company, or "Salad Bar" as a food flavoring or specific consumer food product. I then repeated the Global Internet search indexed to the term "Condiment", and the exact term "Supreme Oil Company, Inc." Search results produced a reference within *MacRae's Blue Book Industrial Directory of Manufacturers* at <http://www.macraesbluebook.com/-search/company.cfm?company=451421>. This reference indicated that Supreme Oil Company, Incorporated is a manufacturer of "edible oil products", such as "vegetable or animal oils, mayonnaise products, and food preparations". This search further produced a record located at <http://www.troymessenger.com/articles/2006/06/01/news/newsss04.txt> regarding an article published in the Troy Messenger Newspaper in Troy, Alabama stating (*sic*):

"Supreme Oil begins production

By Jaine Treadwell, The Messenger

Production is under way at the Supreme Oil South (SOS), Admiration Foods in Brundidge, and that brings the city back to where it was 30 years ago in the food-processing business.

Supreme Oil acquired Piknik Products in February and manufactures mayonnaise, mustard, salad dressings, barbecue sauces, vinegars and a complete line of vegetable oils.

Supreme Oil was founded in 1945 by the late Seymour Unterman. Its expansion in the South was foreseen by the company's president Michael Leffler who has made Supreme Oil Company the largest independent packager and manufacturer of soybean oil and related products on the East Coast.

Supreme Oil Company, Admiration Foods has built its reputation on offering high quality products at competitive pricing to the marketplace and that vision will continue in Brundidge, said Jamie Salem, media relations for Supreme Oil South."

6. The aforementioned search further produced a reference indicating Supreme Oil Company, Inc. conducts business under the trade name "Admiration Foods, Inc.", with a website located at www.admirationfoods.com.

7. Upon visiting the Home Page of this website, I observed a graphic at the top of the page with text reading "Admiration™ Foods. Follow the Leader since 1945." Below this graphic, I observed a Navigation Bar with links entitled "About Us", "Products", "Ask the Chef", and "Contact Us". Upon Selecting the "About Us" link, then "Our History", I observed a web page located at <http://www.admirationfoods.com/-history.php> referencing Supreme Oil Company DBA Admiration Foods.

8. Upon selecting the "About Us" link, then "Plant Locations" from the drop down menu, I observed a web page located at <http://www.admirationfoods.com/-locations.php> stating (sic):

"SUPREME OIL SOUTH BEGINS PRODUCTION IN BRUNDIDGE ALABAMA

On May 15, 2006 production began in Brundidge Alabama for Supreme Oil South (SOS), Admiration Foods. This expansion has been much anticipated. Supreme Oil Company plans to have over 100 employees in this plant and could reach 300 in the coming years.

Supreme Oil Company acquired Piknik Products in February, 2006 and has begun manufacturing mayonnaise, mustard, salad dressings, barbeque sauce, vinegars and a complete line of vegetable oils. By bringing a plant to the Southeast, Supreme Oil now has the capability of offering its existing customers more competitive pricing and creating a new source of supply for food distributors and manufacturers in the Southeast.

Supreme Oil Company was founded in 1945 by the late Seymour Unterman. Its expansion in the South was foreseen by the company's President Michael Leffler who has made Supreme Oil Company the largest independent packager and manufacturer of Soybean Oil and related products on the East Coast.

Supreme Oil Company, Admiration Foods has built its reputation on offering high quality products at competitive pricing to the marketplace. This vision will continue on in Brundidge, Alabama with its new addition Supreme Oil South."

9. Upon selecting the "Products" navigation link from the Home Page, and reviewing all resulting web pages for each line of products, I did not observe any reference to the mark "Salad Bar". Upon selecting "Contact Us" from the Home Page, I observed the following:

World Headquarters:
80 South Dean Street
Englewood NJ 07631
800 SALAD OIL
info@admirationfoods.com

Supreme Oil South
Brundidge, ALA 36010
334 735-3033

10. I then conducted a search of Internet Archives pertaining to www.admirationfoods.com. This search was conducted in an effort to determine whether Admiration Foods had previously offered a product called "Salad Bar", or made reference to such term within their website. Search results produced fifteen records spanning from September 27, 2001 through January 31, 2005; however, these records did not resolve to an active URL, and therefore evaluation of the firm's prior product offerings via the Internet was not feasible.

11. Noting the aforementioned reference within the Admiration Foods website under "locations" indicating the firm had recently acquired Piknik Products, I then conducted a Global Internet search indexed to the term "Piknik Products". This search was conducted in an effort to

develop information pertaining to products produced by the firm. Search results produced a listing in *MacRae's Blue Book Industrial Direct of Manufacturers* referencing the firm's website located at www.piknikproducts.com; however, upon attempting to visit the website, I observed the website does not resolve to an active URL.

SUBJECT CONTACT:

12. On February 12, 2007, I telephoned Supreme Oil, South at 334-735-3033. This call was answered "Thank you for calling Supreme Oil Company, South. How may I direct your call?" by an adult female. Upon asking to speak with a senior sales representative of the firm, my call was transferred to the voice mail of Ms. Ann Anderson. I then left a suitable voice message, and concluded the telephone call.

13. On February 12, 2007, I received a telephone call from an adult male who identified himself as "Mickey Jones, Senior Sales Representative for Supreme Oil, South". Mr. Jones indicated he has been employed for "over sixteen years" as a Sales Representative of the firm, and accordingly, "is very familiar with the Supreme Oil and Admiration Foods line". Upon inquiry whether the firm offers packages of individual servings for its products, Mr. Jones replied "No, we don't, but I can put you in touch with a guy in DeLuth Georgia who can package for you". Mr. Jones then provided me with the name of Mark Katz of Boca Grande Foods, telephone number 770-622-1500.

14. Regarding the firm's offering of salad dressings, Mr. Jones stated "Our flavored dressing line is coming on line in 30-60 days. We've been doing mayo, relish, and mustard. We do one gallon sizes." Regarding whether the firm offers flavored mustards or relish/mustard combinations, Mr. Jones stated, "Not yet. We will probably in six months or so." Upon further

discussion, Mr. Jones conceded the firm currently produces salad dressings in a variety of flavors as indicated on the aforementioned website under “Products”, and confirmed Supreme Oil Company does not offer any product under the trade name “Salad Bar”.

15. Upon direct inquiry whether Supreme Oil Company, Admiration Foods, or Piknik Products has ever offered a product known as “Salad Bar”, Mr. Jones reply “No” without hesitation. Upon further inquiry whether any of the aforementioned firms had previously sold any product under the brand name of “Salad Bar”, Mr. Jones again replied “No”. Upon further discussion, Mr. Jones reaffirmed his certainty that none of the above firms had marketed a “Salad Bar” product during his sixteen years of service with Supreme Oil Company. Mr. Jones then noted that a former employee of Piknik Foods, who had been employed by that firm for “over ten years”, was now his co-worker and office mate. I then heard Mr. Jones ask his co-worker whether Piknik Products had offered a product known as “Salad Bar”. Mr. Jones advised me that said co-worker did not recognize the brand “Salad Bar” as an item Piknik Products produced.

16. Upon direct inquiry whether Supreme Oil Company et al. had any intention of producing a product under the brand name “Salad Bar”, Mr. Jones replied “No” without hesitation or equivocation. He then reiterated the firm’s only foreseeable product offerings are as presently indicated on the firm’s website.

17. Mr. Jones then indicated to me that he had no further information to provide, and so I then thanked him for his time, and concluded the telephone conversation.

Being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, I declare that all the foregoing statements made of my own knowledge are true; and all the foregoing statements made on information and belief are believed to be true.

June 6, 2008

DJ Brooks
DJ Brooks

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